



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

DD 9528
FF/6h
12/1/01

Reply To
Attn Of: OEC-164

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Blaine Edmo, Chairman
Fort Hall Business Council
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, ID 83203

Dear Chairman Edmo:

This letter is in response to your letter dated December 13, 2001, concerning FMC's management of Pond 17 wastes at their Pocatello facility vis-a-vis the requirements of the EPA-FMC Consent Decree of October 1998. As you know, owing to recent events (plant closing and availability of new information regarding actual operation of the NOSAP system) and to practical deadlines for action, as well as the work of the Tribes, the Agency must decide how best to make another critical decision regarding the closure of Pond 17. The Agency's decision will be made by the end of January and will be based primarily on the nature of the sediment in Pond 17. This will include assessing available data, including any additional data the Tribes wish to provide, to determine whether the Pond 17 sediments were treated adequately. In addition, prior to making the decision, the Agency would like extend an invitation to the Tribes to consult with us further to discuss their concerns, either through a conference call or in person. Gil Haselberger will contact your staff within the next two weeks to make the necessary arrangements. EPA Region 10 has made some preliminary assessments of this situation which are outlined below.

Provisions of the Consent Decree regarding Pond 17

Paragraph 22 of Attachment A of the *United States of America v. FMC Corporation* Consent Decree provides that:

In the event that FMC deposits in Pond 17 any phossy waste other than precipitator slurry treated using the NOSAP [Non-Hazardous Slurry Assurance Project] process and meeting the criteria for NOSAP Waste as set forth in the EPA approved Pond Management Plan [PMP], Pond 17 shall be subject to the sediment removal and treatment requirements of Paragraph 21.

Paragraph 21 required all sediment collected in Pond 18 to be removed and treated in the Land

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Disposal Requirements (LDR) Treatment System within five years after the LDR Treatment System was sche

Relationship of Pond 17 and Pond 18

Under the Consent Decree, precipitator slurry that was not treated in accordance with the PMP NOSAP procedures is required to be discharged to Pond 18. In addition to this material, Pond 18 has also received untreated phos dock wastes as allowed under the terms of the Consent Decree. As a result of the amendment of the Consent Decree on October 4, 2001 -- which EPA undertook in response to the agreement between FMC and the Tribes to delete the requirement to remove and treat the Pond 18 sediment in the LDR Treatment System -- FMC is now required to cap the sediment in Cell A of Pond 18 (where most of the sediment is located) in accordance with a closure plan approved by EPA. Thus, the Pond 18 sediment, which includes precipitator slurry that was not treated in accordance with required NOSAP operating requirements, will be capped in place in accordance with an EPA approved closure plan.

What the Consent Decree Specified Regarding Treatment of Materials Going to Pond 17

The Consent Decree does not specify a quantitative P_4 (elemental phosphorus) level that must be achieved by NOSAP treatment. Instead, the PMP, which is incorporated into the Consent Decree, has a "performance standard" which requires that the NOSAP slurry pots be operated in a batch mode with a minimum residence time of 20 minutes, achievement of a pH of at least 11.7, and a temperature of at least 55°C, and that at least 1 pound of lime be added to each batch to ensure that the treated waste would not be ignitable. Again, treated slurry that does not meet these specifications must be discharged into Pond 18.

What Treatment of Pond 17 Waste Actually Occurred

In response to requests for information on NOSAP treatment operations, FMC provided information to EPA and the Tribes on November 16 and December 4, 2001. EPA has evaluated this information and, based on the data we reviewed, concluded that waste discharged to Pond 17 was treated using the NOSAP process, and met the temperature, pH, and lime addition requirements. EPA, and the Tribes, however, recently learned in discussions with the company that neither FMC nor Astaris operated the NOSAP system in a true batch mode; precipitator dust has always been added to the pots continuously, as verified in a letter of November 16, 2001, from Rob Hartman to EPA and the Tribes. Thus, not all waste discharged to Pond 17 was mixed for at least 20 minutes in the slurry pots in accordance with the NOSAP operating requirements in section 3.2.2 of the PMP.

EPA's Preliminary Assessment of the Situation

EPA believes that paragraph 22 of Attachment A to the Consent Decree, which makes Pond 17 "subject to" the requirements of paragraph 21 in the event that NOSAP treatment requirements are not met, requires EPA to make a determination to subject the Pond 17 sediments to the removal and treatment requirements. In making this determination, EPA needs to first address the following question: "What is the nature of the waste that has been placed in Pond 17?" All of the waste in Pond 17 is lime-treated precipitator slurry. The average P_4 level (calculated on a wet weight basis) in the samples collected every six days from the line that discharged NOSAP treated waste to Pond 17 was less than one-tenth the average P_4 level of the untreated samples in the 1994 NOSAP pilot study. Data on in place density of pond solids measured at several phospy ponds indicate that the sediment in Pond 17 can be expected to have

a solids content of 60-75% after de-watering. Based on the measured P₄ level of 137ppm in the slurry, which contained 20-24% solids, one can calculate that the actual P₄ concentration in Pond 17 solids if the pond were to be closed in place would be about 500 ppm; this is well below levels that available data indicate would cause the solids to start smoking or burning if exposed to air. (This is consistent with the experiences of closure of pond 8E that contained similarly treated material.) Furthermore, we believe the P₄ in Pond 17 poses much less of a hazard than the P₄ contained in Pond 18 (which the Tribes have agreed to allow the company to close in place), and which EPA has determined can be capped in a manner that is protective of human health and the environment. The results of the analysis of the treated waste indicate that the NOSAP process accomplished the objective of making the waste non-ignitable.

Potential Penalty Action

Regardless of the decision EPA makes concerning capping versus removing Pond 17 sediments, FMC's failure to operate NOSAP as a batch process remains an issue. Therefore, EPA is considering taking action to penalize FMC for its failure to comply with this requirement. In the event that a settlement is negotiated with FMC, EPA would like to have the Tribes' input on whether there are any projects of benefit to the Tribes which we could have the company undertake in lieu of or in addition to monetary penalties.

Next Steps and Timing

Although the P₄ levels in Pond 17 appear to be below the concentration that would pose a risk of ignition or fire, the pond will continue to produce emissions of hazardous gases as long as it is open. If the decision is made to close the pond in place, we strongly believe that the sooner this is done the better, because this would minimize continued emissions of hazardous gases from the open pond. Because such closure is very complicated and requires both specialty equipment (including a crane system that has to be specially designed and constructed), and custom made pond covering materials, there is a significant lead time in procuring the equipment and materials. They must be ordered during January 2002 to ensure that the initial phase of the cap can be substantially completed before winter weather begins in late fall. If the deliberation process continues for longer than this, activities to close Pond 17 in place – if that is the decision – would have to be postponed until 2003.

Whatever the decision the Agency ultimately makes, I hope that you would agree with us that the less time the pond remains open the better it will be for workers and others in the vicinity. Therefore, we would like to move forward in an expeditious manner. We ask that the Fort Hall Business Council consider this letter and respond with comments and concerns by January 16th. Following our receipt of your response, we anticipate one or more consultation discussions between the Tribes and EPA to try to reach resolution and make a final decision in this matter. EPA recognizes the Tribes' position that the sediment in Pond 17 should be removed. EPA welcomes and will carefully consider any information the Tribes may offer that supports its position. As a result, we ask that the Fort Hall Business Council consider this letter and respond with comments and concerns by January 16, 2002. In addition, following our receipt of your response, we anticipate one or more consultation discussions between the Tribes and EPA to ensure that we fully understand the concerns of the Tribes prior to making our decision.

In the meantime, if you would like to discuss any of this directly with me, please call me at 206-553-1234.

Sincerely,

John Iani
Regional Administrator

cc: Jeanette Wolfley, Special Counsel, Shoshone-Bannock Tribes
Susan Hanson, Shoshone-Bannock Tribes
Gil Haselberger, EPA R10
Scott Sufficool, EPA R10

bcc: Andrew Boyd, EPA R10
Deborah Reyher, Department of Justice

CONCURRENCE				
Name	Haselberger	Boyd	Sufficool	Albright
Initials				
Date				